

REMARKS/ARGUMENTS

The Examiner's attention to the present application is noted with appreciation.

As background, prevention and treatment of Parkinson's, Alzheimer's, Dementia, and other related diseases have been uniquely elusive. There are combinations that have appeared to progress the science, however their mechanisms have been unknown. Applicant's invention provides a revolutionary treatment for a host of dementia conditions and illnesses related to memory and cognitive ability. Applicant's invention combines representatives from any to all of four classes of antioxidants combined with a phosphoester resulting in a supplement which not only is transported into the cell, but is also utilized by the cell in a beneficial manner. Prior art compositions, especially those cited by the Examiner, use fewer components or components at a lower dosage for use as a carrier or preservative. Applicant's claim 1 has been amended to recite, "A health supplement composition for mammals for improving memory and cognitive abilities comprising: at least one phosphoester in a daily amount of between approximately 500 mg and 1000 mg; and at least one antioxidant wherein said use on mammals comprises prevention or treatment of illnesses or conditions selected from the group consisting of a condition requiring memory improvement, cognitive improvement, AIDS-associated dementia, Alzheimer's disease, benign senile forgetfulness, Down's syndrome-associated dementia, Lewy body dementia, multi-infarct dementia, multiple sclerosis, Parkinson's disease-associated dementia, tardive dyskinesia, Wernicke-Korsikoff syndrome, and alcoholism-associated dementia."

In paragraph 8 of the Office Action dated June 17, 2003, the Examiner rejected claims 11-13 under 35 U.S. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11 and 12 have been cancelled. Claim 13 discloses the inclusion of an herbal antioxidant, in an amount greater than zero. The herbal antioxidant component may be one or a combination of herbal antioxidants. Amended claim 1 no longer recites an antioxidant combination but rather "at least one antioxidant". Therefore, claim 13 properly limits claim 1. Combinations of antioxidants have been moved to dependent claims.

In paragraph 9 of the Office Action, the Examiner rejected claims 1, 2, 4, 9, 11, 12, 34 and 35 under 35 U.S.C §102(b) as being anticipated by Shinitzky et al. (U.S. Patent No. 4,474,773 - please note that the Office Action referred to U.S. Patent No. 4,747,773 in error). Shinitzky et al. disclose a novel process for the fractionation of lipids directed to treatment of abnormalities in the structure and dynamics of membranes such as arteriosclerosis and drug addiction. In other words, Shinitzky et al. disclose a process for retrieval of the lipids from natural sources to result in an "active lipid". Shinitzky et al. also

disclose a ratio of saturated to unsaturated fatty acids in a ratio of at least 1:1. This is completely different from Applicant's invention which does not disclose the use of fractionation as a method to acquire the phosphoester and does not require a 1:1 ratio in saturated and unsaturated fatty acids. In addition, Shinitzky et al. teach that the antioxidant is 0.50% by weight of the complex. The use of an antioxidant in this manner is used as a preservative for the lipid, not for a net, complex antioxidant effect as in Applicant's invention. Accordingly, we believe that claim 1 is allowable over Shinitzky et al.

Regarding claims 34 and 35, these claims have been cancelled.

Regarding claims 2, 4, 9, 11, and 12, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Shinitzky et al.

In the second paragraph numbered 8 of the Office Action, the Examiner rejected claims 1, 2, 4, 9, 11, 12, 21, 34 and 35 under 35 U.S. C. §103(a) as being unpatentable over Bombardelli et al. (U.S. Patent No. 5,043,323) in view of Shinitzky et al. (U. S. Patent No. 4,474,773). Bombardelli et al. teach a dosage that is well below the Applicant's invention. Bombardelli et al. disclose a total dosage of 1 mg to 500 mg, of which the phosphoester is only a portion. Shinitzky et al. disclose intravenous administration, or administration to mouse cells in vitro (or in an experimental setting). Applicant's preferred application is an oral supplement (see claim 41) to produce a net antioxidant effect. Neither Bombardelli et al. nor Shinitzky et al. disclose a composition that provides a net antioxidant effect. Increasing the dosage of Bombardelli et al. to reach Shinitzky's level would result in an intravenous dosage that is much higher than applicant's dosage for the phosphoester, and lower for the antioxidant. Applicant's supplement is a completely different composition, therefore a person with ordinary skill in the art would not combine Shinitzky et al. and Bombardelli et al. to produce applicant's oral supplement.

In addition, Bombardelli et al failed to recognize or appreciate that the phosphoester could be used for anything besides as an inactive carrier or transport mechanism. Bombardelli et al's low dosage is in line with this thinking. In contrast, Applicant's invention utilizes the phosphoester as a carrier and as an active ingredient, thus requiring the higher dosage of 500-1000 mg (using phosphatidylcholine as a comparison). An analogy is helpful to compare Applicant's invention to Bombardelli et al., as follows. The early settlers to the New World used their boat (carrier) to transport them to the New World. After arriving, they then chopped up the boat to use it for housing materials. In effect, the carrier or transport vehicle was also used for a different purpose after the transport had occurred. Bombardelli et al, in contrast, uses the phosphoester only as a transport (e.g. a ferry), due to his low doses and does not utilize it as a main active ingredient in his composition. He never anticipated or suggested for it to be

used after it had accomplished its transport. Accordingly, it would not be obvious, from Bombardelli et al. (or with any combination of the references cited by the Examiner), to increase the amount of the phosphoester. Accordingly, we believe that amended claim 1 is allowable over Bombardelli et al. in view of Shinitzky et al.

Regarding claims 34 and 35, these claims have been cancelled.

Regarding claims 2, 4, 9, 11, 12 and 21, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

In the second paragraph numbered 9 of the Office Action, the Examiner rejected claims 1, 2, 4, 9, 11-14, 21, 34 and 35 as being unpatentable under 35 U.S.C. §103(a) over Bombardelli et al. (U.S. Patent No. 6,648,377) in view of Shinitzky et al. (U.S. Patent No. 4,474,773). Bombardelli et al. teaches the use of a different composition, using the antioxidant as a carrier. Shinitzky et al. has been discussed above. Therefore, if an ordinary person skilled in the art did combine Bombardelli et al. and Shinitzky et al., the result would use the antioxidant as a carrier or preservative, not the applicant's supplement which uses the antioxidant in a beneficial manner to create a net antioxidant effect. Accordingly, we believe that claim 1 is allowable over Bombardelli et al. in view of Shinitzky et al.

Regarding claims 34 and 35, these claims have been cancelled.

Regarding claims 2, 4, 9, 11, 12 and 21, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

In paragraph 10 of the Office Action, the Examiner rejected claims 1, 2, 4, 9, 11-14, 21, 34 and 35 as being unpatentable under 35 U.S.C. 103(a) over Bombardelli et al. (U.S. Patent No. 5,043,323), Bombardelli et al. (U.S. Patent No. 6,648,377), and Castleman (*The Healing Herbs*) in view of Shinitzky et al. (U.S. Patent No. 4,474,773). As discussed above, applicant's supplement has a completely different. The addition of Castleman does not overcome the dosage, component, base ingredient, or administrative vehicle issues identified above. Accordingly, claim 1 is allowable over Bombardelli et al., Bombardelli et al., and Castleman in view of Shinitzky et al.

Regarding claims 34 and 35, these claims have been cancelled.

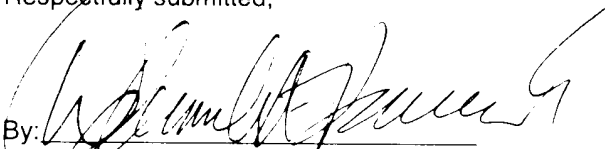
Regarding claims 2, 4, 9, 11, 12 and 21, these claims are dependent on claim 1. Accordingly, these claims are also believed to be allowable over Bombardelli et al. in view of Shinitzky et al.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

A check for additional claim fees is attached. Authorization is given to charge payment of any additional fees required, or credit any overpayment, to Deposit Acct. 13-4213.

Respectfully submitted,

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